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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

FNS-2015-0029

RIN 0584-AE36

SNAP Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Interim final rule.

SUMMARY: The Food and Nutrition Service is codifying the requirement for State agencies to verify applicant employment data through the National Directory of New Hires (NDNH) for the determination of Supplemental Nutrition Assistance Program (SNAP) eligibility and correct amount of benefits, pursuant to section 4013 of the Agricultural Act of 2014. This interim final rule requires that State agencies access employment data through the NDNH at the time of SNAP certification, including recertification, and aims to improve Program integrity by reducing the risk of improper payments due to unreported or misreported income. This rule further amends regulations to change the reporting frequency requirement for the “Program and Budget Summary Statement Part B - Program Activity Statement” from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year.

DATES: To be considered, written comments on this interim final rule must be received on or before [insert 60 days from date of publication in the Federal Register]. This rule will become effective [insert 60 days from date of publication in the Federal Register].

Implementation Date: State agencies have already been instructed through FNS directive to implement this provision as required by the Agricultural Act of 2014.

ADDRESSES: Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Send written comments to Jane Duffield, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, VA, 22302.

- All written comments submitted in response to this interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA, 22302, by phone at (703) 305-2425 or via email at Jane.Duffield@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

With this interim final rule, the Food and Nutrition Service (FNS) amends the SNAP regulations at 7 CFR part 272 to require State agencies to access employment data through the National Directory of New Hires (NDNH) at the time of certification, including recertification, to determine the eligibility status and correct benefit amount for SNAP applicants and participants. This requirement codifies section 4013 of the Agricultural Act of 2014 (P.L. 113-79). The legislation was effective on February 7, 2014, and FNS implemented the mandated requirements, including that associated with the NDNH requirement, by directive to all SNAP State agencies on March 21, 2014. This interim rule also amends regulations at 7 CFR 272.2 to change the requirement for State agency submission of the “Program and Budget Summary Statement Part B – Program Activity Statement” (FNS-366B, OMB #0584-0594, expiration date 6/30/2017) from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year.

Implement National Directory of New Hires Employment Verification Requirement

Current regulations at § 273.2(f)(1)(i) require State agencies to verify gross non-exempt income for all households prior to certification or, in instances where the State's attempts to verify the income with the employer have been unsuccessful, use the best available information to determine benefits. Additionally, regulations at § 273.12(a) and § 273.21 establish the SNAP household's responsibility to report applicable changes in income while participating in the Program. Thus, the accuracy of Program benefits issued to a household relies on the accuracy of reported and verified information.

The NDNH is a repository of employment, unemployment insurance, and quarterly wage data maintained by the U.S. Department of Health and Human Services (HHS) Office of Child Support Enforcement (OCSE). The data residing in the NDNH includes W-4 (new hire) records from the State Directory of New Hires, quarterly wage and unemployment insurance data from the State workforce agencies, and new hire and quarterly wage data from Federal agencies. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) mandated the establishment of the NDNH in 1996. A major component of the Federal Parent Locator Service (FPLS), the NDNH was originally established for State Child Support Enforcement (CSE) Agencies to locate non-custodial parents in order to establish and enforce child support orders. As of February 2015, there were 64,571 employers and 33,610 subsidiaries listed in the NDNH. The number of employers and their subsidiaries listed in the NDNH generally increase each year. In 2014, over 4,320 new employers were added to the database.

The NDNH may only be accessed by authorized agencies with legislative authority. On July 27, 2006, Pub. L. 109-250 amended section 453(j) of Social Security Act (42 U.S.C. 653(j)) by the adding a new paragraph (10), which authorized State agencies administering SNAP under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.] to access NDNH data for carrying out Program responsibilities. Prior to the amendment, State SNAP agencies could only access employment data made available through their own State Directory of New Hires for the determination of SNAP eligibility. Pub. L. 109-250 gave State SNAP agencies the option to access NDNH, thus providing an opportunity to receive employment data from other States, multi-State employers, and Federal agencies. Despite this change in legislation, few State agencies exercised the option to use it. Most State agencies instead opted to access employment data via their respective State Directory of New Hires, State Workforce Agency, and other data sources. By now requiring State agencies to access NDNH data for SNAP, FNS believes States will benefit from a reduction in improper payments due to unreported income.

This rule codifies in § 272.16 the requirement that each State agency must establish a system to compare identifiable information about each adult household member against data from the NDNH. Section 4013 of the Agricultural Act of 2014 mandates that States use NDNH to verify applicant and participant employment data and enter into a computer matching agreement with HHS pursuant to the authority in 42 U.S.C. 653(j)(10). State agencies must enter into a computer matching agreement with HHS in order to access the NDNH. States must continue to adhere to requirements §272.12 addressing the use of information obtained from computer matching programs. The State agency may only use

the required data matching to verify that the employment status of adult household members is accurately reported on the SNAP application. Because the NDNH does not include employment data on individuals under the age of 18, this verification requirement is limited to adult household members. The law further mandates the State agency to conduct matches against NDNH new hire data at the time of certification. FNS believes that conducting the match at both initial application and recertification will meet the intent of section 4013, and is therefore codifying the requirement for both certification and recertification.

The NDNH maintains three data sets. While this rule addresses the requirement for State agency matching against the NDNH new hire data set, States have the option to match against the quarterly wage and unemployment insurance data sets at their own discretion. Because the timeliness of quarterly wage and quarterly unemployment insurance data may not provide a true benefit to the State agency in determining eligibility and benefit levels, this rule only requires that States match against NDNH new hire data at minimum.

Data matching has provided many positive results for the efficient and effective administration of the program. However, it has come to the attention of FNS that there has been some confusion regarding reporting systems and integrity provisions for SNAP, specifically with regard to simplified reporting. Therefore, FNS wishes to clarify that in addition to the requirements of these integrity provisions, State agencies are also expected to comply with the requirements of the reporting system applicable to SNAP

households provided at 7 CFR 273.12. State options for action on reported changes during the certification period must be followed, even for required data matches.

Data received through NDNH is not considered verified upon receipt. Consistent with requirements set forth in the Privacy Act (5 U.S.C. 552a(p)) and in SNAP regulation at 7 CFR 272.12(c), the State agency may not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or SNAP recipient based on information provided by the NDNH unless the match information has been independently verified and a Notice of Adverse Action or Notice of Denial has been sent to the household. The Privacy Act defines independent verification as the investigation and confirmation of specific information relating to an individual used as a basis for an adverse action against the individual. Should there be a delay in the State agency's ability to verify the NDNH new hire match results within the required application processing timeline, the State agency is expected to continue processing the application without the requested documentation verifying the information. If, after either certification or recertification is completed, the State agency receives verification of information obtained through the NDNH match indicating that the household is ineligible or was approved for the incorrect benefit amount, the State should deny, reduce or terminate benefits, as applicable, and establish a claim to collect any benefits that were overpaid, in accordance with regulations at § 273.18.

Change the Reporting Frequency of Program Activity Statement (FNS-366B)

With this rule, FNS is also modifying a reporting requirement of State agencies by increasing the frequency of submitting a Program Activity Statement from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year. Section 16(a) of the Food and Nutrition Act of 2008 authorizes 50 percent Federal reimbursement for State agency costs to administer SNAP. SNAP regulations at 7 CFR 272.2(a) require that State agencies plan and budget Program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement and the Program Activity Statement (7 CFR 272.2(a)(2)). Under current regulations at 7 CFR 272.2(c), the State agency is required to submit to FNS for approval a Budget Projection Statement (FNS-366A) which projects total Federal administrative costs for the upcoming fiscal year and a Program Activity Statement (FNS-366B) which provides Program activity data for the preceding fiscal year. Current regulations at 7 CFR 272.2(e)(2)(ii) require State agencies to submit the Program Activity Statement to FNS no later than 45 days after the end of the State agency's fiscal year, which is typically August 15 for most States. The Program Activity Statement was created to substantiate the costs the State agency expects to incur during the next fiscal year. It currently provides data on the number of SNAP applications the State agency processed, the number of fair hearings the State agency conducted, and the fraud control activities in which the State agency was engaged in the preceding year. FNS uses the data to monitor State agency activity levels and performance.

While originally intended only to support the States' annual SNAP budget request by providing a summary of State SNAP activities in the previous State fiscal year, the data

reported on the Program Activity Statement has also become a vital tool for monitoring State operations related to application processing, fair hearings, and fraud prevention activities. The data reported on the Program Activity Statement enables FNS to identify areas that may need improvement and to provide more effective technical assistance to State agencies. The Agency believes an increase in reporting frequency will allow for greater and more timely access to Program data. It will help States, FNS, and other stakeholders identify trends, inconsistencies and inefficiencies earlier in each fiscal year. A 2014 U.S. Government Accountability Office (GAO) performance audit of FNS (GAO-14-641, *Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*) concluded that State-reported data on anti-fraud activities are not reliable for ensuring Program integrity and assessing States' performance. Additionally, the study warned that data inconsistencies could limit FNS' ability to identify more effective and efficient practices for State anti-fraud efforts. With more current data, States and other interested parties will be able to identify gaps and areas in need of greater attention, and allow States to respond more quickly to those gaps. This increased responsiveness, along with a concurrent FNS effort to update and improve the reliability of the data collected in the Program Activity Statement, will help to address directly the concerns raised by GAO. With this regulation, FNS is also aligning the new quarterly requirement to the Federal fiscal year. As most SNAP data is reported monthly, quarterly or annually based on the Federal fiscal year, this change will improve FNS' ability to conduct data analysis by using data collected over consistent periods of time.

II. Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This interim final rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this interim final rule would not have a significant impact on a substantial number of small entities. While there may be some impact on the State and local agencies that administer the Program in implementing this provision, the impact is not expected to be significant. Applicants and recipients may also be impacted to the extent that matching client information with records in the National Directory of New

Hires may identify a client as ineligible for the Program, thus preventing them from Program participation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this interim final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior

to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this interim final rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in SNAP.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. On February 18, 2015, the agency held a webinar for tribal participation and

comments. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this interim final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting an information collection under 0584-NEW, which contains the burden information in the rule for OMB's review and approval. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the Federal Register announcing OMB's approval. Once approved the new provisions in this rule and the burden requirement associated with the National Directory of New Hires will be merged into the existing information collection for Supplemental Nutrition Assistance Program (SNAP) Forms: Applications, Periodic Reporting, Notices, OMB Control Number #0584-0064, expiration date 4/30/2016, which is currently under revision. New

provisions and burden requirements in this rule associated with the Program Activity Statement (FNS-366B) will be merged into the existing information collection for the Food and Nutrition Service Food Programs Reporting System (FPRS), OMB Control Number #0584-0594, expiration date 6/30/2017, which is currently under revision.

Comments on this interim final rule must be received by [Insert date that is 60 days from publication in the FEDERAL REGISTER].

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20403. Please also send a copy of your comments to Jane Duffield, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Jane Duffield at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Supplemental Nutrition Assistance Program: Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting

OMB Number: 0584-NEW

Expiration Date: N/A

Type of Request: New Collection

Abstract: This rule codifies section 4013 of the Agricultural Act of 2014, requiring State agencies to access employment data through the National Directory of New Hires (NDNH) at the time of certification, including recertification, to determine eligibility status and correct benefit amount for SNAP applicants. This rule also amends regulations at 7 CFR 272.2 to increase the frequency of the requirement for State agency submission of the Program Activity Statement from an annual requirement based on the State fiscal year to a quarterly requirement, unless otherwise directed by FNS, based on the Federal fiscal year.

272.2 - Program Activity Statement (FNS-366B):

State agencies are required to submit (quarterly) to FNS a Program Activity Statement (FNS-366B) providing a summary of Program activity for the State agency's operations during the previous reporting period. The activity report provides data on the number

of applications processed, number of fair hearings and fraud control activity. FNS uses the data to monitor State agency activity levels and performance.

272.16 - National Directory of New Hires:

Applicant and Recipient Screening: The State agency must compare identifiable information about each adult household member against information from the NDNH. States must make the comparison of matched data at the time of application and recertification and must independently verify any positive match results.

Verification of Match: The State agency must independently verify the information prior to taking any adverse action against an individual. Should the State agency receive employment information via the NDNH that was previously unreported by the household, the State agency may issue a Request for Contact to the household to verify the information or contact the employer directly, depending upon applicable reporting requirements as defined at 7 CFR 273.12.

Notice: The Notice of Adverse Action or Notice of Denial is issued by State agencies to participating households whose benefits will be reduced or terminated as the result of a change in household circumstances. Should the State agency independently verify unreported or underreported income discovered through NDNH, and that income results in a reduction of benefits or change in eligibility, the State agency must take action by issuing the household a Notice of Adverse Action or Notice of Denial and adjusting benefits accordingly.

Burden Estimates: Out of the 251,482.35 hours requested for this new information collection request and after OMB’s approval, FNS will merge the total reporting burden estimates into 0584-0064 are 249,252.64 burden hours & 12,276,992 total annual responses; and, the total reporting burden into 0584-0594 is 2,229.71 burden hours and 159 total annual responses. After approval into these existing collection packages and there are no recordkeeping requirements with these new or changing provisions.

See the burden breakdown by affected public below. After OMB approval of this information collection request, the program plans to publish another notice in the Federal Register announcing OMB’s approval.

Respondents: State and local agencies, households

Estimated Number of Respondents: 891,125

Estimated Number of Responses per Respondent: 13.78

Estimated Total Annual Burden on Respondents: 252,432.64 hours. See the table below for estimated total annual burden for each type of respondent.

State Agencies

CFR	Action	Number of Respondents	Frequency per Respondent	Total Annual Responses	Burden Hours Per Response	Total Burden Hours	Previous Submission Total Hours	Difference Due to Program Changes	Difference Due to Adjustments
272.2	Program Activity Statement (FNS 366B)	53	4	212	15	3,180	950.29	2,229.71	0.00
272.16	NDNH - Applicant/Recipient Screening	53	1	9,158,240	0.017	155,690.08	0.00	155,690.08	0.00
272.16	NDNH - Verification of Match	53	1	1,237,600	0.03	37,128	0.00	37,128.00	0.00
272.16	NDNH - Notice of Adverse Action or Notice of Denial	53	1	495,040	0.03	14,851.20	0.00	14,851.20	0.00
Total		53		10,891,092	0.019359792	210,849.28	950.29	209,898.99	0.00

Households

CFR	Action	Number of Respondents	Frequency per Respondent	Total Annual Responses	Burden Hours Per Response	Total Burden Hours	Previous Submission Total Hours	Difference Due to Program Changes	Difference Due to Adjustments
272.16	NDNH - Request for Contact	891,072	1	891,072	0.03	26,732.16	0.00	26,732.16	0.00
272.16	NDNH - Notice of Adverse Action or Notice of Denial	495,040	1	495,040	0.03	14,851.20	0.00	14,851.20	0.00
Total		891,072		1,386,112	0.03	41,583.36	0.00	41,583.36	0.00

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 272

Civil rights, Supplemental Nutrition Assistance Program, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 272 is amended as follows:

PART 272 - REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011-2036.

2. In § 272.2, revise paragraphs (c)(1)(ii) and (e)(2)(ii) to read as follows:

§272.2 Plan of operation.

* * * * *

(c) * * *

(1) * * *

(ii) The Program Activity Statement, to be submitted quarterly (unless otherwise directed by FNS), solicits a summary of Program activity for the State agency's operations during the preceding reporting period.

* * * * *

(e) * * *

(2) * * *

(ii) The Program Activity Statement shall be submitted quarterly (unless otherwise directed by FNS) based on the Federal fiscal year.

* * * * *

3. Add § 272.16 to read as follows:

§ 272.16 National Directory of New Hires.

(a) General. Each State agency shall establish a system to verify applicant employment data for the determination of SNAP eligibility and correct benefit amount.

(b) Data source. States shall use the U.S. Department of Health and Human Service (HHS) National Directory of New Hires (NDNH) and enter into a computer matching agreement with HHS pursuant to the authority in 42 U.S.C. 653(j)(10).

(c) Use of match data. In accordance with the procedural requirements and privacy protections required for computer data matching at 5 U.S.C. 552a(p), States shall provide a system for:

(1) Comparing identifiable information about each adult household member against data from the NDNH. States must, at minimum, match household members against new hire data available in the database. States shall make the comparison of matched data at the time of application and recertification.

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and

(6) The establishment and collection of claims as appropriate.

Audrey Rowe
Administrator
Food and Nutrition Service

January 14, 2016
Date

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